

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.243 of 2024

Dr. Rajat Ghosh

S/o Late Hara Mohan Ghosh, resident of South Dhaleswar, near AOC, Lane No.5, PO-Agartala College, Jogendranagar, PS-East Agartala, District-West Tripura, Pin-799004.

....Petitioner

Versus

1. Tripura University (a Central University)

Represented by its Registrar, having his office at Suryamaninagar, PO-Suryamaninagar, PS-Amtali, Agartala, District-West Tripura, Pin-799022.

2. The Registrar, Tripura University

Having his office at Suryamaninagar, PO-Suryamaninagar, PS-Amtali, Agartala, District-West Tripura, Pin-799022.

3. The Vice-Chancellor, Tripura University (Chairman of Selection Committee) having his office at Suryamaninagar, PO-Suryamaninagar, PS-Amtali, Agartala, District-West Tripura, Pin-799022.

4. The Chairman of Scrutiny Committee

Tripura University, Suryamaninagar, PO-Suryamaninagar, PS-Amtali, Agartala, District-Tripura, Pin-799022 [Notice to be served by the Respondent No.3, i.e., the Vice-Chancellor, Tripura University]

5. The Dean, Faculty of Science

Tripura University, Suryamaninagar, PO-Suryamaninagar, PS-Amtali, Agartala, District-Tripura, Pin-799022

6. The University Grants Commission (UGC)

Represented by its Secretary, Bahadur Shah Zafar Marg, New Delhi-110002.

....Official Respondents

7. Dr. Jagdish Kumar Sahu, Associate Professor,

Department of Pharmacy, Tripura University, Suryamaninagar, PO-Suryamaninagar, PS-Amtali, Agartala, District- Tripura, Pin-799022.

....Private Respondent

For the Petitioner	:	Mr. P. Roy Barman, Sr. Advocate Mr. S. Bhattacharjee, Advocate Mr. D. Paul, Advocate
For the Respondents	:	Mr. S. Lodh, Advocate
Date of hearing	:	07.01.2025
Date of delivery of Judgment & Order	:	18.03.2025
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH**JUDGMENT & ORDER**

By way of filing the present writ petition, the petitioner, Dr. Rajat Ghosh has sought for a direction for quashing/setting aside the selection/appointment of respondent no.7 (private respondent), Dr. Jagdish Kumar Sahu, who was appointed as an Associate Professor under the respondents-Tripura University (a central University) through a selection process.

2. Shortly stated, the fact of the case of the petitioner is that he being an Assistant Professor under the Tripura University, the respondents no. 1 to 6 herein, had applied for the post of Associate Professor in the department of Pharmacy in terms of an advertisement issued by the respondents-Tripura University on 19.07.2023. The said post was reserved for Other Backward Classes-Non Creamy Layer [for short, OBC-NCL] category of candidates to which he belongs to. Accordingly, call letter was issued to the petitioner and thereafter, on 20.11.2023 verification of the documents and personal interview of the aspirants for the said post was held. The main grievance as ventilated in this writ petition is that the respondent no.7, the private respondent herein, had been selected by the respondents-University for the said post most illegally and arbitrarily as according to the petitioner the respondent no.7 had no 'valid/updated' OBC-NCL certificate as per requisite prescribed format of the Government of India. Being upset with such selection, the petitioner submitted representation through Right to Information Act so as to know as to whether the private respondent had

submitted 'valid/updated' OBC-NCL certificate on or before the cut-off date of submitting his application for the said post. But, the respondents-University denied to give any reply to the petitioner and rejected his application compelling him to file the instant writ petition whereby and whereunder he seeks a direction to quash the appointment order of private respondent no.7 to the post of Associate Professor.

3. Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. S. Lodh, learned counsel appearing for the respondents.

4. At the very outset, Mr. Roy Barman, learned senior counsel for the petitioner submitted that in Clause-13 of the "general instruction" of the advertisement dated 19.07.2023, it is clearly prescribed that '*applications for the posts reserved for OBC/SC/ST/PWBD & EWS shall be supported by valid/updated certificate in a Government of India (GOI) prescribed format duly issued by the competent authority*'. It is further submitted that the last date (cut-off date) for submission of online application form was 24.08.2023 upto 5.30 pm. It is clearly asserted in the petition that on the date of interview (20.11.2023 as well as on the date of issuing appointment letter (20.11.2023), the private respondent No.7 did not possess the 'valid/updated' OBC-NCL certificate for the year 2023-24 and after getting appointment and at the time of joining, the respondent no.7 had managed to submit his OBC-NCL certificate dated 12.12.2023. Mr. Roy Barman, learned senior counsel has emphatically submitted that as per settled position of law, a candidate/applicant must have to comply with all the conditions

and eligibility criteria as laid down in the advertisement and the documents required must be furnished along with the application form on or before the cut-off date mentioned in the advertisement. But, the respondent no.7 failed to submit a 'valid/updated' OBC-NCL certificate for the year 2023-2024 on or before the cut-off date of submission of application. Therefore, according to Mr. Roy Barman, learned senior counsel since the private respondent no.7 did not possess the 'valid/updated' OBC-NCL certificate for the year 2023-2024, on the cut-off date, his candidature ought not to be considered for selection to the post of Associate Professor in the department of Pharmacy under the respondents-University as it amounts to a gross violation of constitutional rights of the petitioner guaranteed under Articles 14 & 16 of the Constitution of India. Learned senior counsel, therefore, has prayed for setting aside/quashing the impugned selection/appointment of the private respondent to the post of Associate Professor in the department of Pharmacy under the respondents-University.

5. *Per contra*, Mr. Lodh, learned counsel appearing on behalf of the official respondents refuting the contentions made in the writ petition submitted that there is no question of cancellation of appointment of the private respondent as the appointment was made as per terms of advertisement notification and other relevant instructions. Mr. Lodh, learned counsel contended that the private respondent had uploaded his OBC-NCL Certificate dated 13.08.2015 issued by the Sub-Divisional Officer, Revenue Tehsil Gird, District-Gwalior, Madhya Pradesh and Income Certificate issued by Tehsilder, Gwalior at the time of submission of his online application for the post of Associate Professor. Thereafter, the University

authority conducted interview and after scrutinizing the documents submitted by the candidates, the private respondent was selected for the post of Associate Professor in the Pharmacy department. Appointment letter was issued to respondent no.7 and in consequence thereof, he submitted joining report along with up-to-date OBC-NCL certificate issued on 12.12.2023. It is reiterated in the counter affidavit filed by the respondent no.7 that the up-to-date OBC-NCL certificate dated 12.12.2023 was issued in furtherance of the OBC-NCL certificate dated 13.08.2015 which was in possession of the private respondent. To support the contentions made in the counter affidavit filed by respondent no.7, Mr. Lodh, learned counsel submitted that for obtaining up-to-date OBC-NCL certificate one should submit his/her existing OBC-NCL certificate and income certificate of his/her father and on receipt of the same, the up-to-date OBC-NCL certificate is issued by the competent authority. In the instant case, at the time of submitting his candidature, he had submitted his existing OBC-NCL certificate and income certificate of his father along with the application form. The validity of OBC-NCL certificate is for one year and as he could not collect the same before submitting his application, but, he furnished the same at the time of his joining. Thus, Mr. Lodh, learned counsel strongly urged that there was no infirmity in considering the candidature of respondent no.7 for the post of Associate Professor by the respondent-University and they have rightly appointed the respondent no.7 (private respondent).

6. Having considered the submissions put forth by learned counsel of the parties and on perusal of the writ petition, counter affidavits along with the annexures thereto, I find that the last date of submission of

application was on 24.08.2023 and the eligibility of the candidates has to be fulfilled on or before the last date of submission of application. On perusal of the case record, I find that at the time of submission of application, the petitioner submitted his OBC-NCL certificate which was issued on 03.08.2023. But, it is the contention of the respondents that the private respondent could not submit his 'updated/valid' OBC-NCL certificate at the time of submission of his application before the cut-off date, however, he was in possession of his existing certificate dated 13.08.2015. It appears that the petitioner uploaded his existing OBC-NCL certificate dated 13.08.2015 issued by the Sub-Divisional Officer, Revenue, Tehsil Gird, District-Gwalior, Madhya Pradesh at the time of submission of his online application. It is the grievance of the petitioner that the private respondent did not have any 'valid/updated' OBC-NCL certificate at the time of submission of application through online which was required as per general instructions, essential information and clarifications of the advertisement [Annexure-5 to the writ petition] issued by the respondents-University.

7. In the instant case, the sole issue that arises before this court is whether the appointment of the private respondent under OBC-NCL category is liable to be quashed/set aside on the ground that the 'valid/updated' OBC-NCL category certificate was issued after expiry of the cut-off date mentioned in the advertisement.

8. In Clause 13 of the advertisement, it is specifically mentioned that *applications for the posts reserved for OBC/SC/ST/PWBD& EWS shall*

be supported by 'valid/updated' certificate in a Govt. of India (GoI) prescribed format duly issued by the competent authority.

9. My attention has been drawn to Office Memorandum Mp/36011/1/2012-ESTT(Res.) dated 08.10.2015 issued by the Ministry of Personnel , Public Grievance and Pensions, Department of Personnel and Training, Govt. of India. For the sake of convenience and brevity, the said Office Memorandum may be reproduced here-in-below *in extenso*:

"No.36011/1/2012-Estt.(Res.)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

Establishment Reservation - I Section

North Block, New Delhi-110 001

Dated the 8th October, 2015.

OFFICE MEMORANDUM

Subject: Reiteration of the instructions on verification of claims of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes for purpose of appointment to posts/services.

The undersigned is directed to say that as per extant instructions where a candidate belonging to a Scheduled Caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC) is unable to produce a certificate from any of the prescribed authorities, he/she may be appointed provisionally on the basis of whatever prima-facie proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time. Instructions have been issued vide DoPT's letter No.36022/1/2007-Estt. (Res.) dated 20.3.2007 to the Chief Secretaries of all States/UTs for streamlining the system of verification of caste certificates so that unscrupulous non-SC/ST/OBC persons are prevented from securing jobs meant for SCs/ST/OBCs by producing false certificates. Timely and effective verification of caste status is necessary so that the benefit of reservation and other scheme of concessions etc. go only to the rightful claimants.

2. *In this regard, attention is invited to the instructions contained in the following Office Memoranda/Orders issued by this Department from time to time. A copy each of the Office Memoranda is enclosed:-*

(i) OM No. 36019/7/75-Estt. (SCT) dated 31.10.1975

(ii) OM No. 36011/16/80-Estt. (SCT) dated 27.02.1981

(iii) OM No. 36011/3/2005-Estt. (Res.) dated 09.09.2005

(iv) OM No. 36012/6/88-Estt. (SCT) dated 24.4.1990

3. *Instances have been brought to the notice of this Department that despite the aforesaid instructions, the appointments of the candidates belonging to SC/ST/OBC communities are with-held/delayed due to pending caste certificates verification.*

4. *It is, therefore, reiterated that in the situation where a candidate belonging to a Scheduled Caste, Scheduled Tribe and Other Backward Classes is unable to produce a certificate from any of the prescribed authorities, he/she may*

be appointed provisionally on the basis of whatever prima-facie proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time and if there is genuine difficulty in his/her obtaining a certificate, the appointing authority should itself verify his/her claim through the District Magistrate concerned.

5. All Ministries/ Departments are requested to bring the contents of this O.M. to the notice of all concerned.

(G. Srinivasan)

Deputy Secretary to the Government of India”

10. Having gone through the above Office Memorandum [for short, OM], I find that when ‘a candidate belonging to a Scheduled Caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC) is unable to produce a Certificate from any of the provisional authorities, he/she may be appointed provisionally on the basis of whatever prima facie proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time.’

11. It is further mentioned in Para 3 of the said OM that ‘instances have been brought to the notice of this Department that despite the aforesaid instructions, the appointments of the candidates belonging to SC/ST/OBC communities are with-held/delayed due to pending Caste Certificates verification.’

12. That apart, in Para 4 of the said OM, it is specifically mentioned that ‘if there is genuine difficulty in his/her obtaining a certificate, the appointing authority should itself verify his/her claim through the District Magistrate concerned.’

13. In the backdrop of essentialities in the advertisement published by the respondents-University, in one sense, it appears to be correct to say that the candidates ought to submit their ‘valid/updated’ OBC-NCL

certificate before the cut-off date of submission of application. The petitioner had been able to upload his up-dated OBC-NCL certificate issued on 03.08.2023 i.e. before the cut-off date whereas, the private respondent submitted his existing OBC-NCL certificate issued on 13.08.2015 at the time of submission of his application through online. But, it is evident that on being selected for the said post, the private respondent at the time of his joining furnished his OBC-NCL certificate, issued on 12.12.2023 by the competent authority. That means the private respondent submitted his certificate after the cut-off-date.

14. The OM dated 08.10.2015 (supra) stipulates that *if a candidate belonging to a Scheduled Caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC) is unable to produce a Certificate from any of the provisional authorities, he/she may be appointed provisionally on the basis of whatever prima facie proof he/she is able to produce in support of his/her claim subject to his/her furnishing the prescribed certificate within a reasonable time.*

15. From the above instructions, it is clear that a candidate aspiring to participate in a selection process is not mandatorily required his valid/updated caste certificate at the time of submission of his application. However, he is required to furnish any document, which can *prima facie* prove that he belongs to a particular caste. Even, such candidate may be appointed provisionally subject to furnishing his/her caste certificate within a reasonable time.

16. In the instant case, what is emerged that the private respondent in consistent with OM dated 08.10.2015 has furnished his valid/updated

OBC-NCL certificate dated 12.12.2023 before the respondents-University that has been issued by the competent authority in continuation/furtherance of the certificate dated 13.08.2015 in favour him. Being satisfied with the said certificate, the respondents-University selected the private respondent and issued appointment letter in his favour for the post of Associate Professor.

17. Mr. Roy Barman, learned senior counsel for the petitioner at the time of argument placed reliance on the decision in *Sudhir Singh & Ors. Vrs. State of U.P. and Ors.*, reported in *MANU/SC/1190/2023: 2024(1) SLR 435(SC)* and in the *State of Bihar & Ors. Vs. Madhu Kant Ranjan & Anr.*, reported in *(2021) 17 SCC 141*.

18. I have gone through the said decisions and on perusal of the same it appears that the facts of those cases are quite distinguishable from the facts of the instant case.

19. In the context of the present case, I may gainfully refer to the decision rendered by the High Court of Delhi in *W.P.(C) 15514/2023 & CM APPL. 62139/2023*, titled as *Ravi Kumar Vrs. All India Institute of Medical Sciences* where the Court relying upon numerous decisions of the Hon'ble Supreme Court, had observed that *the candidature may not be cancelled solely on account of submission of the OBC-NCL certificate issued beyond the cut-off date, but within the extended time provided by the respondent*. In the concluding portion, the High Court had summarized the law on the subject as under:

“89. Thus, from the discussion above, it is clear that the petitioner’s OBC-NCL certificate dated 23.11.2023 ought to have been considered by the respondent and the requirement contained in the prospectus, specifying the time-frame for the OBC-NCL certificate to be between 06.11.2022 to 05.11.2023, is arbitrary.

90. The conclusions reached by the court are thus summarised below:

- a. The insistence of the respondent upon the OBC-NCL certificate to have been issued between 06.11.2022 to 05.11.2023 is arbitrary and does not have any rational nexus with the object sought to be achieved through the reservation of seats.
- b. The requirement of an OBC-NCL certificate is fundamentally different from a technical/academic qualification. While the former is mere evidence of what already exists, the latter refers to the acquisition of a qualification.
- c. In terms of *Pushpa (supra)*, read with *Ram Kumar Gijroya (SC)*, *Ram Kumar Gijroya (DB)*, *Mukesh Kumar Yadav (supra)*, *Karn Singh Yadav (supra)*, the insistence by the respondent on the submission of the OBC-NCL certificate issued during the given cut-off date, is arbitrary and has no rational nexus with the object of reservation. Also, the candidature may not be cancelled solely on account of submission of the OBC-NCL certificate issued beyond the cut-off date, but within the extended time provided by the respondent.
- d. As per *Anil Kumar (supra)*, the cut-off date is to be construed in a manner favourable to the candidate, and not to nullify a fundamental right merely because the OBC-NCL certificate is being submitted post the cut-off date.
- e. On facts, the petitioner’s OBC-NCL certificate dated 23.11.2023 ought to have been accepted by the respondent and it is directed accordingly.”

20. From the above enunciation of law, I may easily hold that the requirement of placing an OBC-NCL certificate before the authorities concerned is fundamentally different from a technical/academic qualification. Further, an OBC-NCL certificate is mere evidence of a fact which already exists while technical/academic qualification refers to the acquisition of qualification. Added to it, the cut-off-date for production of OBC-NCL certificate is necessary to be construed in a manner favourable to a candidate, and not to nullify a fundamental right merely because the OBC-NCL certificate is being submitted after expiry of the cut-off-date. In other words, failure to produce OBC-NCL certificate at the time of submission of application should not be treated as fatal stalling a candidate from participating in the selection process. Now, if the aforesaid principles simultaneously, read with the OM dated 8th October, 2015 issued by the Ministry of Personnel, Public Grievance and Pensions, Department of Personal and Training, Govt. of India quoted *supra* are applied to the facts of the instant case, it comes to fore that the private respondent no.7, Dr. Jagdish Kumar Sahu was having OBC-NCL certificate as on 13.08.2015 which proved *prima facie* that belongs to OBC-NCL category. He could not produce the updated certificate at the time of submission of application to participate in the selection process of Associate Professor in response to the advertisement (*supra*) issued by the respondents-University. But, this failure to produce the OBC-NCL certificate will not in any way nullify his participation in the selection process and non-production of the said certificate cannot be said to be inconsistent to the terms of the advertisement. The instructions embodied in the OM dated 8th October, 2015 permit a

candidate to submit his/her OBC-NCL certificate after the cut-off-date, and even at the time of his joining, if selected, to the post advertised. It is revealed that the competent authority had issued the OBC-NCL certificate dated 12.12.2023 in continuation/furtherance of the certificate that was issued on 13.08.2015 in favour of the private respondent no.7. In my opinion, in view of the OM dated 08.10.2015, issued by the Govt. of India, it mandates the States/UTs or any employers under the State/UTs to accept such subsequently issued OBC-NCL certificates by the competent authority. Non-acceptance of such certificate at a belated stage would be contrary to the instructions contained in OM dated 8th October, 2015 and will suffer from arbitrariness.

21. In the opinion of this Court, the object of conducting written examination and *viva voce* in respect of appointments are made to achieve the object of most meritorious candidates in the field. On perusal of the OM dated 08.10.2015, it reveals that the appointing authorities concerned were left open to verify the genuinity/authenticity of the certificate through the District Magistrate or the concerned issuing authority.

22. In the instant case, Dr. Jagdish Kumar Sahu, private respondent no.7 had submitted his caste certificate i.e. OBC-NCL issued on 13.08.2015, which is a *prima facie* proof that he belongs to OBC-NCL category. As per OM dated 08.10.2015, a candidate even may be allowed to join to the post by the employer provisionally asking him to produce the certificate within a reasonable period of time. In the case on hand, the private respondent has produced the updated OBC-NCL certificate at the time of his joining to the

post as Associate Professor issued on 12.12.2023 by the competent authority. So, according to me, the respondents-University has not committed any error in accepting his candidature and to appoint him as Associate Professor under them.

23. In my ultimate analysis, the respondents-University has selected and appointed the private respondent no.7 to the post of Associate Professor under Pharmacy department in consistent with the object which sought to be achieved and as per mandatory instructions under the OM dated 08.10.2015.

24. In the light of aforesaid discussions and for the reasons recorded here-in-above, the instant writ petition stands dismissed being devoid of any merit. However, there shall be no order as to costs.

JUDGE

